

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEANNE FITZGERALD AND STEVEN
FITZGERALD, on behalf of and as
parents and natural guardians of
HAL OWEN FITZGERALD, a deceased
minor,

Petitioners,

vs.

Case No. 17-3815N

FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION
ASSOCIATION,

Respondent,

and

PAUL LAROSE, M.D.; ALLESSA
ALLISON, M.D.; JENNIFER ALLEN,
CNM; ADVANCED WOMEN'S CARE, LLC;
AND BAPTIST HOSPITAL, INC.,

Intervenors.

_____ /

FINAL ORDER APPROVING STIPULATION FOR ENTRY OF AWARD

This cause came on for consideration pursuant to sections 766.304 and 766.305(7), Florida Statutes, upon the Stipulation and Joint Petition for Compensation of Claim Arising Out of Florida Birth-Related Neurological Injury Pursuant to Chapter 766, Florida Statutes (Stipulation and Joint Petition), filed with the Division of Administrative Hearings on June 28, 2018, for the entry of an order approving the resolution of a

claim for compensation benefits filed in accordance with the provisions of chapter 766 and a resolution of the exclusive remedy otherwise available as outlined in chapter 766.

By the terms of their stipulation, Petitioners, as parents and natural guardians of Hal Owen Fitzgerald, deceased, and Respondent, the Florida Birth-Related Neurological Injury Compensation Association (NICA), have agreed that Leanne Fitzgerald and Steven Fitzgerald are the parents and legal guardians of Hal Owen Fitzgerald (Hal), deceased; that Hal was born a live infant on or about October 31, 2014, at Baptist Hospital, a "hospital" as defined by section 766.302(6) located in Pensacola, Florida; and that Hal's birth weight exceeded 2,500 grams. The Parties have further agreed that Paul Larose, M.D., and Allessa Allison, M.D., provided obstetrical services at Hal's delivery and were "participating physicians" in the Florida Birth-Related Neurological Injury Compensation Plan, as defined by section 766.302(7). The Parties have agreed that Hal suffered a "birth-related neurological injury," as that term is defined by section 766.302(2), which was the sole and proximate cause of his injury and subsequent death.

It is ORDERED:

1. The Stipulation and Joint Petition filed on June 28, 2018, is hereby approved, and the Parties are directed to comply with the provisions of the Stipulation and Joint Petition.

2. Petitioners, Leanne Fitzgerald and Steven Fitzgerald, as the parents and legal guardians of Hal Owen Fitzgerald, deceased, are awarded one hundred thousand dollars (\$100,000.00), pursuant to section 766.31(1)(b)1., to be paid as a lump sum; payment of benefits up to and including the effective date of the Stipulation and Joint Petition pursuant to section 766.31(1)(a), subject to the provisions of paragraph 20 of the Stipulation and Joint Petition; and payment of the \$10,000.00 death benefit pursuant to section 766.31(1)(b)1.

3. NICA will reimburse Rose Kasweck, attorney for Petitioners, an agreed-upon attorney's fee of \$10,000.00 and expenses of \$1,587.80, totaling \$11,587.80 in full for services rendered in the filing of this claim.

4. Upon the payment of the award of \$100,000.00, the death benefit of \$10,000.00, past benefit/expenses, and \$11,587.80 for attorney's fees and costs, the claims of Petitioners shall be deemed fully satisfied and extinguished.

5. The Division of Administrative Hearings retains jurisdiction over this matter to resolve any disputes, should they arise, regarding the Parties' compliance with the terms of this Order.

DONE AND ORDERED this 3rd day of July, 2018, in Tallahassee,
Leon County, Florida.



W. DAVID WATKINS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of July, 2018.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Review of a final order of an administrative law judge shall be by appeal to the District Court of Appeal pursuant to section 766.311(1), Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy, accompanied by filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal. See § 766.311(1), Fla. Stat., and Fla. Birth-Related Neurological Injury Comp. Ass'n v. Carreras, 598 So. 2d 299 (Fla. 1st DCA 1992).